



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/146800

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the PACU - 5173 in regard to FoodShare benefits (FS), a hearing was held on March 07, 2013, via telephone. The Petitioner requested that the record be held open to allow her to submit additional evidence. The record was held open until March 14, 2013. On March 12, 2013, the Petitioner submitted additional information. The information was provided to the agency by DHA on March 13, 2013. The agency requested additional time to review and respond to the Petitioner's evidence. The record was held open for the agency's review and response. The record closed on March 29, 2013.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,232 for the period of October 1, 2011 – August 31, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services

1 West Wilson Street

Madison, Wisconsin 53703

By: Judy Johnson

Dept. of Health Services

Office of the Inspector General

1325 S. Broadway

DePere, WI 54115

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. CF was a minor child who resided with the Petitioner beginning in January, 2010.
3. On November 18, 2010, the agency issued a Notice of Decision to the Petitioner informing her that she would receive monthly FS benefits of \$772 for a household of seven including CF.
4. CF was enrolled at Custer High School in Milwaukee from January 13, 2010 – February 8, 2011. CF was enrolled in school in Little Rock, Arkansas from August 15, 2011 – April 25, 2012. She resided on the campus of the school.
5. On September 12, 2011, the agency issued a Notice of Decision to the Petitioner informing her that she would receive monthly FS benefits of \$909 for a household of seven including CF.
6. On September 19, 2011, the agency issued a Notice of Decision to the Petitioner informing her that she would receive monthly FS benefits of \$932 for a household of seven including CF.
7. On March 6, 2012, the agency processed a Six Month Report Form (SMRF) from the Petitioner. The Petitioner reported CF as part of her household.
8. Beginning May 1, 2012, the Petitioner's household size was reduced to four when Petitioner's daughter and her two children moved out of the Petitioner's household.
9. On June 19, 2012, the Petitioner filed a change report with the agency reporting a change in address and shelter expense.
10. On August 2, 2012, the agency received an interstate match that CF has received FS benefits in the State of Arkansas since August 16, 2011.
11. On September 6, 2012, Petitioner reported CF had moved out of her household.
12. On January 15, 2013, the agency issued a Notification of FS Overissuance and worksheets to the Petitioner informing her that the agency seeks to recover an overissuance of FS benefits in the amount of \$1,232 for the period of October 1, 2011 – August 31, 2012.
13. On January 22, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

As decided in prior cases before the Division of Hearings and Appeals, "discovery" was not the date of referral of a likely overpayment for investigation; discovery is the date when the agency actually determines an overpayment of a fixed amount occurred, and sends a notice to the FS recipient. Overpayments due to client error may be recovered for up to 6 years prior to discovery. However, a BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012), indicates that the "discovery" date is not the date of the agency's FS Overpayment Notice, but instead the "the date that the ESS [agency] became

aware of the potential that an overissuance may exist.” In this case, the agency became aware of a potential for an overissuance in August, 2012 when it was in contact with the State of Arkansas.

When a household receives more FS than it was entitled to receive, it must be recovered by the agency. This includes when a recipient files an appeal, receives a continuation of benefits pending the appeal, and then the appeal is resolved adverse to the recipient, as occurred here. FoodShare Wisconsin Handbook, 7.3.1.9. Here, the alleged overpayment sought by the agency occurred 10 months prior to the discovery date, so the non-client error recovery method is clearly appropriate under law.

In this case, the agency presented convincing evidence that CF has not resided in Wisconsin with the Petitioner since at least August, 2011. The agency obtained information from the State of Arkansas which demonstrates that CF has been receiving FS benefits from that state since August 16, 2011. School attendance records provide evidence that CF was enrolled in school in Milwaukee from January, 2010 – February, 2011 and in Arkansas from August, 2011 – April, 2012. The agency had contact with CF on September 5, 2012. At that time, CF reported she had not been in the Petitioner’s household or residing in Wisconsin for two years. Per FS regulations, the Petitioner was required to report that CF was no longer in the household at her September, 2011 review with the change in benefits being effective October 1, 2011. Therefore the agency seeks to recover benefits for the period of October 1, 2011 – August 31, 2012.

At the hearing, the Petitioner testified that she took CF in to her household when CF had nowhere else to go. Her mother was incarcerated in Arkansas and her father would not care for her. The Petitioner testified that CF was in her home until sometime in 2011 when she left to go to Arkansas. She testified that CF returned for a period of time and then went back to Arkansas when CF’s mother was released from jail. The Petitioner testified that neither CF nor CF’s mother informed her that CF would not be returning. They did not inform the Petitioner that CF had opened her own benefit case in Arkansas. The Petitioner believed that CF would be returning but did not know when. In August, 2012, CF’s mother contacted the Petitioner to ask her to remove CF from her benefit case.

The Petitioner provided no evidence at the time of the hearing to verify the dates that CF lived in her home. She requested additional time post-hearing to provide school attendance records. The Petitioner did fax information to indicate that CF was enrolled at Custer High School in Milwaukee but the information did not provide enrollment dates. The information was provided to the agency representative who requested time to verify CF’s school attendance dates. The agency worker was able to get information from Custer that CF attended school there from January, 2010 – February, 2011. The agency was also able to gather information from Arkansas indicating that CF was enrolled in college in Arkansas from August 16, 2011 – April 25, 2012 and she resided on campus during that time.

Based on the evidence presented, the agency has provided sufficient information to demonstrate that CF was not residing with the Petitioner during the period of October 1, 2011 – August 31, 2012.

The agency has presented a copy of the FoodShare notice and worksheets demonstrating the computations of the overpayment at issue here. I reviewed those worksheets along with budget screens showing how the agency calculated the monthly FS allotments. The Petitioner did not dispute the income, expenses or deductions upon which those allotments were based. The overpayment is based only on a revision to the monthly allotment based on a correction to the household size during the overpayment period. The calculations of the agency are accurate based on the evidence presented.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner was overissued FS benefits in the amount of \$1,232 for the period of October 1, 2011 – August 31, 2012 based on the Petitioner's failure to report that CF was no longer a member of the household during that time.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

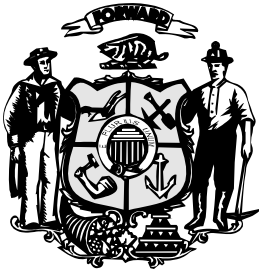
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of April, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 10, 2013.

PACU - 5173

Public Assistance Collection Unit

Division of Health Care Access and Accountability